

Message Text

PAGE 01 STATE 078972

71

ORIGIN EB-11

INFO OCT-01 EUR-25 EA-11 NEA-10 IO-12 ADP-00 L-03 DOTE-00

CIAE-00 COME-00 DODE-00 FMC-04 INR-10 NSAE-00 RSC-01

CG-00 COA-02 AID-20 CEA-02 FRB-02 OPIC-12 TRSE-00

CIEP-02 LAB-06 SIL-01 OMB-01 TAR-02 AGR-20 OIC-04

STR-08 /170 R

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L/ EB- FWILLIS

EUR/ RPE- JRTARRANT(INFO)

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P R 262153 Z APR 73

FM SECSTATE WASHDC

TO USMISSION OECD PARIS PRIORITY

AMEMBASSY LONDON PRIORITY

AMEMBASSY OSLO PRIORITY

AMEMBASSY STOCKHOLM PRIORITY

AMEMBASSY COPENHAGEN PRIORITY

AMCONSUL HAMBURG PRIORITY

AMEMBASSY PARIS PRIORITY

AMEMBASSY THE HAGUE PRIORITY

AMEMBASSY BRUSSELS PRIORITY

AMEMBASSY ROME PRIORITY

AMEMBASSY ATHENS PRIORITY

AMEMBASSY MADRID PRIORITY

AMEMBASSY TOKYO PRIORITY

AMEMBASSY OTTAWA PRIORITY

AMEMBASSY CANBERRA PRIORITY

AMEMBASSY WELLINGTON PRIORITY

INFO AMEMBASSY BONN

USMISSION GENEVA

UNCLAS STATE 078972

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PAGE 02 STATE 078972

E. O. 11652: N/ A

TAGS: ETRN, UNCTAD, OECD

SUBJECT: SHIPPING: CODE OF CONDUCT FOR LINER CONFERENCES

REF: (A) OECD PARIS 9231 (B) DEPT A-1498, FEB. 17, 1973

1. AT OECD/ MTC SPECIAL GROUP (SG) ON UNCTAD MEETING MARCH 26-30 (REF A) US REP PROMISED TO PROVIDE OTHER DELS WITH US PROPOSAL FOR SECTION ON IMPLEMENTATION OF CODE OF CONDUCT. WE HAVE PREPARED TENTATIVE TEXT WHICH HOWEVER HAS NOT BEEN CLEARED WITH RELEVANT AGENCIES. IN ORDER HOWEVER TO OBTAIN SG CONSIDERATION OF US TENTATIVE IDEAS IT IMPERATIVE TO PROVIDE OTHER SG MEMBERS WITH TEXT ASAP. THIS MAY BE DONE IN ACCORDANCE WITH NOW- ESTABLISHED SG PROCEDURE BY PRESENTING TENTATIVE TEXT AS PERSONAL PROPOSAL OF US REP (RONALD WEBB, DIRECTOR, OFFICE OF MARITIME AFFAIRS, DEPARTMENT OF STATE).

2. ACTION ADDRESSEES THEREFORE REQUESTED TO TRANSMIT TEXTS IN PARAS. 3 AND 4 BELOW TO INDIVIDUALS IDENTIFIED REF B ABOVE (EXCEPT DENMARK: BREDHOLT VICE BRUUN- PEDERSEN, FRANCE: BARNARD VICE KALTENBACH) MAKING CLEAR IT IS PERSONAL PROPOSAL AND DOES NOT REPRESENT DEFINITIVE US POSITION. USOEDC PARIS SHOULD REQUEST SECRETARIAT TO CIRCULATE TEXT AS SG DOCUMENT.

3. " US DRAFT PROPOSAL FOR THE IMPLEMENTATION SECTION OF THE CODE OF CONDUCT FOR LINER CONFERENCES

" UNDER THIS PROPOSAL THE PROVISIONS ON " CONSULTATION" . WOULD APPEAR UNDER THE SECTION , RELATIONS WITH SHIPPERS" RATHER THAN IN THE " IMPLEMENTATION" SECTION.

" THIS PROPOSAL IS PREDICATED ON THE HYPOTHESIS THAT THE CODE IS INCORPORATED INTO A CONVENTION. IT SAYS VERY LITTLE ABOUT RESOLUTION OF DISPUTES OR ENFORCEMENT OF THE CODE BECAUSE WE DO NOT BELIEVE THAT IT IS POSSIBLE, GIVEN THE GREAT VARIETY OF NATIONAL LEGAL, POLITICAL, AND COMMERCIAL TRADITIONS OF THE COUNTRIES NEGOTIATING THE CODE, UNCLASSIFIED

PAGE 03 STATE 078972

TO ESTABLISH UNIFORM DISPUTE- RESOLUTION OR ENFORCEMENT PROCEDURES. THEREFORE IT IS LEFT LARGELY TO EACH COUNTRY TO DECIDE HOW TO IMPLEMENT AND TO ENFORCE THE CODE.

" WHILE IT IS TRUE THAT THIS MAY GIVE RISE TO SOME VAGARIES IN INTERPRETATION OF THE CODE, WE DO NOT BELIEVE THIS TO BE AS SERIOUS A RISK OR PROBLEM AS THE OTHER ALTERNATIVES, I. E. NATIONAL REGULATION WITHOUT A UNIFORM CODE, A UNIFORM CODE ENFORCED THROUGH COMPULSORY INTERNATIONAL ARBITRATION, ETC.

" FINALLY, WE BELIEVE THAT THE APPROACH DESCRIBED BELOW FULFILLS THE MANDATE SET FORTH IN UN RESOLUTION 3035 (XXVII), FOR " A DRAFT CONVENTION OR ANY OTHER MULTILATERAL LEGALLY BINDING INSTRUMENT." A CONVENTION

WOULD BY ITSELF FULFILL THE LEGALLY BINDING CRITERION;
THE MANDATE DOES NOT STATE HOW THE LEGAL COMMITMENT
NEEDS TO BE CARRIED OUT BY THE INDIVIDUAL COUNTRIES.

" THE TEXT OF OUR PROPOSAL IS AS FOLLOWS:

E. IMPLEMENTATION

"1. LINER CONFERENCES AND THEIR MEMBERS SHALL CONFORM
THEIR PRACTICES TO THE PROVISIONS OF THIS CODE AS A MINI-
MUM STANDARD OF CONDUCT. AGREEMENTS BETWEEN CONFERENCE
MEMBERS, OR BETWEEN CONFERENCES AND SHIPPERS' ORGANIZA-
TION, ON MATTERS COVERED BY THIS CODE, SHALL BE IN CON-
FORMITY WITH THE CODE.

"2. THE CODE MAY BE IMPLEMENTED IN A MORE SPECIFIC FORM
ACCORDING TO THE CIRCUMSTANCES OF THE RESPECTIVE TRADES
IN DIFFERENT GEOGRAPHIC REGIONS, SO LONG AS SUCH IMPE-
MENTATION IS NOT INCONSISTENT WITH THE CODE ITSELF. SUCH
IMPLEMENTATION MAY INTER ALIA TAKE THE FORM OF LOCAL OR
REGIONAL AGREEMENTS BETWEEN CONFERENCES AND SHIPPERS'
ORGANIZATIONS OR SHIPPERS' REPRESENTATIVES.

"3. IN DISPUTES ARISING BETWEEN PRIVATE PARTIES OVER
THE PROVISIONS OF THIS CODE THE PARTIES SHALL ATTEMPT TO
RESOLVE THEM, IN THE FIRST INSTANCE, BY THE CONSULTATION
UNCLASSIFIED

PAGE 04 STATE 078972

AND SELF- POLICING MECHANISMS DESCRIBED IN THIS CODE, AND
IN THE SECOND INSTANCE THROUGH COMMERCIAL CONCILIATION
AND ARBITRATION UPON AGREEMENT OF THE PARTIES CONCERNED.
WHERE POSSIBLE, ARBITRATION CLAUSES SHOULD BE INCLUDED
IN THE AGREEMENTS AND CONTRACTS CONCLUDED UNDER THE PRO-
VISIONS OF THIS CODE.

"4. 1. IN THE EVENT OF A DISPUTE BETWEEN A
PRIVATE PARTY AND A CONFERENCE WHICH CANNOT BE RESOLVED
IN ACCORDANCE WITH THE PROVISIONS OF PARA. (3) ABOVE:

(A) THE PRIVATE PARTY SHALL, IF CLAIMING INJURY,
BE ENTITLED TO SEEK REDRESS (IN ACCORDANCE WITH THE
NATIONAL LAWS) IN EITHER

(I) THE COUNTRY IN WHICH THE HEADQUARTERS OF
THE CONFERENCE IS LOCATED, OR

(II) THE COUNTRY WHERE THE ACTIVITY OF THE
CONFERENCE WHICH GAVE RISE TO THE CLAIM TOOK
PLACE;

(B) THE CONFERENCE SHALL, IF CLAIMING INJURY,
BE ENTITLED TO SEEK REDRESS (IN ACCORDANCE WITH NATIONAL
LAWS) IN EITHER

(I) THE COUNTRY IN WHICH THE HEADQUARTERS OF
THE PRIVATE PARTY IS LOCATED, OR

(II) THE COUNTRY WHERE THE ACTIVITY OF THE

PRIVATE PART WHICH GAVE RISE TO THE CLAIM TOOK PLACE;
(C) IN ADDITION TO (A) OR (B), AND IF THE CLAIM
IS BASED ON A CONTRACT PROVISION, THE PRIVATE PARTY OR
CONFERENCE SHALL BE ENTITLED TO SEEK REDRESS IN THE
COUNTRY WHERE THE CONTRACT BETWEEN THE CONFERENCE AND
PRIVATE PARTY OUT OF WHICH THE CLAIM ARISES WAS MADE,
AND, IF THE CLAIM RELATES TO A SPECIFIC CONTRACT FOR
CARRIAGE OF GOODS, OR TO THE CARRIAGE OF SPECIFIC GOODS,
IN THE COUNTRY OF THE PORT WHERE CARRIAGE OF SUCH GOODS
ORIGINATED OR WAS DESTINED.

"4. 2. IF INJURY IS PROVED THE CLAIMANT SHALL BE
ENTITLED TO DAMAGES AS PROVIDED BY THIS CONVENTION AND, TO
THE EXTENT NOT INCONSISTENT THEREWITH, THE APPLICABLE
NATIONAL LAW.

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<< END OF DOCUMENT >>

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TAGS: ETRN, OECD, UNCTAD
To: OECD PARIS
LONDON
OSLO
STOCKHOLM
COPENHAGEN
HAMBURG
PARIS

THE HAGUE
BRUSSELS
ROME
ATHENS
MADRID
TOKYO
OTTAWA
CANBERRA
WELLINGTON INFO BONN
GENEVA

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